Supreme Court, U.S.
FILED
MAY 16 2000
CLERK

No. 99-1592

IN THE

SUPREME COURT OF THE UNITED STATES

EVANDRO S. SANTINI, *et al.*,

Petitioners,

v.

CONNECTICUT HAZARDOUS WASTE MANAGEMENT SERVICE,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

PETITIONERS' REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

TIMOTHY S. HOLLISTER
(Counsel of Record)
JOSEPH P. WILLIAMS
SHIPMAN & GOODWIN LLP
One American Row
Hartford, Connecticut 06103
(860) 251-5000

GUS BAUMAN
BEVERIDGE & DIAMOND, P.C.
1350 I Street, N.W.
Suite 700
Washington, D.C. 20005
(202) 789-6000
Counsel for Petitioners.

May 16, 2000

Washington, D.C. • THIEL PRESS • (202) 328-3266

9 pp

Page

TABLE OF CONTENTS

I. Whether The Connecticut Supreme Court Was Entitled To Base Its Adjudication Of The Petitioners' Taking Claim Solely On State Law Grounds, Without Adherence To Or Consistency With Decisions Of This Court Interpreting The Takings Clause Of The Fifth Amendment, Is Precisely The Question Presented In This Petition 1

II. Respondent's Argument That The Petitioners' Factual Claims Have Been Adjudicated Overlooks The Fact That The Majority Opinion Below Decided The Case As A Matter Of Law Based Solely On The Nature Of The Respondent Agency's Actions, Without Regard To The Economic Impact Or The Owner's Investment-Backed Expectations As Required By This Court's Decisions 4

Conclusion 6

TABLE OF AUTHORITIES

Federal Cases:

England v. Louisiana State Board of Medical Examiners, 375 U.S. 411 (1964) 2

First English Evangelical Lutheran Church of Glendale v. Los Angeles County, 482 U.S. 304 (1987) 5

Lucas v. South Carolina Coastal Council, 505 U.S. 1003 (1992) 5

Cases, continued: **Page**

Migra v. Warren City School District Board of Education, 465 U.S. 84 (1984) 2

Penn Central Trans. Co. v. New York City, 438 U.S. 104 (1978) 5

Standard Oil Co. v. Johnson, 316 U.S. 481 (1942) 3

Three Affiliated Tribes v. Wold Engineering, 467 U.S. 138 (1984) 3

Webb's Fabulous Pharmacies v. Beckwith, 449 U.S. 155 (1989) 4

Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172 (1985) 2

Federal Constitutional Provisions:

U.S. Constitution, Amendment V 2, 3, 4

State Constitutional Provisions:

Connecticut Constitution, Article I, §11 ..... 1, 3

PETITIONER'S REPLY TO RESPONDENT'S OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Petitioners Evandro S. Santini and Santini Homes, Inc. hereby reply to the Opposition to Petition for a Writ of Certiorari ("Opp.") filed May 2, 2000, by the Respondent Connecticut Hazardous Waste Management Service (the "Agency").

I.

WHETHER THE CONNECTICUT SUPREME COURT WAS ENTITLED TO BASE ITS ADJUDICATION OF THE PETITIONERS' TAKING CLAIM SOLELY ON STATE LAW GROUNDS, WITHOUT ADHERENCE TO OR CONSISTENCY WITH DECISIONS OF THIS COURT INTERPRETING THE TAKINGS CLAUSE OF THE FIFTH AMENDMENT, IS PRECISELY THE QUESTON PRESENTED IN THIS PETITION.

The Respondent opposes this Petition by observing that the Petitioners pleaded only under the takings clause of the Connecticut Constitution, that their state court complaint does not cite the U.S. Constitution, and that the Connecticut Supreme Court characterized this case as arising only under the state constitution. In light of these facts, the Respondent asserts that the case was decided solely "under the terms of the Connecticut Constitution." Opp. at 2. The Respondent then appears to argue that there is an adequate and independent state ground to support the majority opinion below, *id.* at 3, but it does not discuss or analyze any decisions of this Court discussing what constitutes such as basis for a state court decision.

The Respondent misses the point of the Petition. The Petitioners pled only a state law cause of action because

that is what is required by *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985). Because the Fifth Amendment is not even violated until the property owner has availed itself of state procedures and has been denied just compensation, no court, state or federal, has subject matter jurisdiction over a federal taking claim at the time a property owner initiates a taking claim in a state court. In this case, adhering to *Williamson County*, the Petitioner pursued an available state procedure for seeking just compensation, while presenting to the state courts in their briefs the principle that decisions of this Court interpreting the Fifth Amendment Takings Clause constitute binding authority and furnish minimum standards for the adjudication of their claim. The Respondent does not dispute that the Petitioners expressly argued the applicability of federal constitutional standards at each level of the state court proceedings.[1]

It is true that the Petitioners did not attempt to "reserve" a subsequent federal claim using the procedure outlined in, among other cases, *England v. Louisiana State Bd. of Med. Examiners*, 375 U.S. 511 (1964). That is because *Williamson County* makes it clear that a federal taking claim is not ripe for adjudication until a land owner has been denied just compensation in the state system. A litigant cannot reserve an unripe claim, *see Migra v. Warren City School Dist. Bd. of Educ.*, 465 U.S. 84, 85 n.7 (1984) (litigant may only reserve a federal

[1] The Petitioners' arguments with respect to minimum federal standards were not in any sense a passing reference in the proceedings below; federal constitutional law was extensively briefed at both the trial and appellate levels by both parties. The Respondent did not dispute in either he trial or appellate court the relevance of federal decisions (and thus, the Connecticut Supreme Court's holding rejecting federal standards was issued *sua sponte*).

claim that could have been brought simultaneously in state court).[2]

The Respondent Agency is simply wrong in its contention that the Connecticut Supreme Court did not decide a substantial question of federal law. In fact, the court below, as appears plainly from the face of the majority opinion, *see* Petition, App. at 17a-19a, nn.19, 20, directly addressed the Petitioners' argument that decisions of this Court furnish minimum standards, and held that such standards were "irrelevant." The majority then proceeded to *assume* that the takings clause of the Connecticut Constitution is equivalent to the Fifth Amendment Takings Clause, thereby sidestepping the extensively briefed issue of whether Connecticut's takings jurisprudence comports with current Fifth Amendment standards. After setting aside federal law, the court below went on to formulate standards that are plainly repugnant to decisions of this Court. *Id.* at 19a-21a.

Where a state court construes state law broadly "in the belief that federal law poses no barrier to the exercise of state authority," this Court "has reviewed the federal question on which the state law determination appears to have been premised." *Three Affiliated Tribes v. Wold Engineering*, 467 U.S. 138, 152 (1984), *citing, e.g., Standard Oil Co. v. Johnson*, 316 U.S. 481 (1942). The Questions Presented do not rest upon an adequate, independent state ground, because they address the relationship between state procedures for just compensa-

---

[2]Moreover, reservation of a federal taking claim would have been inconsistent with the necessary and proper presentation to the state court of the principle that it must adhere to decisions of this Court interpreting the Fifth Amendment Takings Clause.

tion and the Fifth Amendment Takings Clause, not the meaning of the state procedure in isolation.[3]

II.

RESPONDENT'S ARGUMENT THAT THE PETITIONERS' FACTUAL CLAIMS HAVE BEEN ADJUDICATED OVERLOOKS THE FACT THAT THE MAJORITY OPINION BELOW DECIDED THE CASE AS A MATTER OF LAW BASED SOLELY ON THE NATURE OF THE RESPONDENT AGENCY'S ACTIONS, WITHOUT REGARD TO THE ECONOMIC IMPACT OR THE OWNER'S INVESTMENT-BACKED EXPECTATIONS AS REQUIRED BY THIS COURT'S DECISIONS.

As explained previously, the Connecticut Supreme Court, in the first sentence of its decision, framed the dispositive issue as whether as a matter of law "mere governmental planning" may constitute an inverse condemnation. As a result, the court concluded that "it is not necessary to discuss the plaintiffs' factual claims. . . ." Petition, App. at 17a, n.19. Thus, to the extent that the opinion below discusses factual claims, it does so only in *dictum.*

As stated in the Petition, it is not necessary for this Court to revisit or resolve competing factual claims about economically viable use of the Santini property following the June 1991 radioactive waste facility siting announcement. The gravamen of the Petition is that had the Connecticut Supreme Court analyzed Santini's factual claims using federal constitution standards, its *analysis* would

---

[3]Moreover, in *Webb's Fabulous Pharmacies v. Beckwith,* 449 U.S. 155, 159 n.5 (1980), a takings case, this Court considered the mere fact that a takings claim was being litigated as implicating a federal question.

have been markedly different. The court would have analyzed the facts in light of the tests and criteria established in *Penn Central Trans. Co. v. New York City*, 438 U.S. 104 (1978), *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304 (1987), and *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). It would not have inquired, as a dispositive issue of law, whether the Agency's actions constituted "mere government planning," and it would not have regarded the existence or absence of a fixed and irreversible "intent" to condemn as determinative.

Resolution of factual issues that arose in the state court proceedings is unnecessary to deciding the Questions Presented in this Petition. The issue is whether the Connecticut Supreme Court violated federal constitutional law by holding that it was not necessary to review the factual underpinnings of the Petitioners' taking claim.

CONCLUSION

For the foregoing reasons and those stated in their March 31, 2000 Petition, including that the decision below is in conflict with both decisions of this Court and those of other jurisdictions, the Petitioners respectfully submit that their Petition for a Writ of Certiorari to the Supreme Court of Connecticut should be granted.

Respectfully submitted,

TIMOTHY S. HOLLISTER
JOSEPH P. WILLIAMS
SHIPMAN & GOODWIN LLP
One American Row
Hartford, Connecticut 06301-2819
(860) 251-5000

GUS BAUMAN
BEVERIDGE & DIAMOND, P.C.
1350 I Street, N.W.
Suite 700
Washington, D.C. 20005-3311
(202) 789-6000
Counsel for Petitioners.

May 16, 2000